

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 27 March 2023

**Public Authority:** Department for Business & Trade  
**Address:** Old Admiralty Building  
London  
SW1A 2DY

**Decision (including any steps ordered)**

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1. The complainant has requested information regarding deep sea mineral exploration licences. The department formerly known as the Department for Business, Energy and Industrial Strategy ("BEIS") relied on the exception at EIR regulation 12(5)(e) – confidentiality of commercial or industrial information.
2. The Commissioner's decision is that the public authority is entitled to rely on the exception to withhold the annual reports held by BEIS, which the Commissioner considers forms part of the requested information, and the public interest favours maintaining the exception. The Commissioner finds a breach of regulation 5(2) regarding the delay in responding to the request.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

**Request and response**

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4. On 19 March 2021, the complainant on behalf of Greenpeace UK following earlier correspondence regarding deep sea mineral

exploration licences; wrote to the department formerly known as BEIS<sup>1</sup> and requested information in the following terms:

"We therefore request the following information about the licences, namely:

1. the effective date of the licences;
2. the period for which they have been granted;
3. the legal power under which they were granted; and
4. copies of any environmental impact assessments carried out before they were granted, including details of any consultations carried out.

We also request, insofar as they relate to the environment:

5. The plans of work referred to in the licences;
6. Copies of reports made to the Secretary of State under cl.11(3) of the licences i.e., reports of any incident arising from activities pursued under the licence which has caused or is causing serious harm to the marine environment or which poses a threat of causing such harm;
7. Copies of environmental reports submitted under cl.12 of the licence; and
8. Copies of the verification of the reports submitted.

Please also provide:

9. Details of the UK policy position in relation to deep sea mining when the licences were granted and any changes in that policy to date; and
  10. Details of the UK's contribution to ISA's draft regulations on exploitation through deep sea mining in the Area."
5. On 15 June 2021 BEIS provided information on all the points of the request but in relation to point 7 of the request, withheld copies of the "annual reports" which it explained are provided to the Secretary of State in line with the scope of 12(2) of the exploration licences held by UKSR. This information was withheld in reliance of regulation 12(5)(e)

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<sup>1</sup> Although the complainant originally submitted their request to BEIS, on 19 March 2021, BEIS was dissolved on 7 February 2023 when four new departments were created. This decision notice is therefore served on the Department for Business & Trade.

- confidentiality of commercial information where confidentiality is provided by law to protect a legitimate economic interest.
6. Following an internal review BEIS wrote to the complainant on 28 July 2021 which upheld its initial response whilst explaining that it had:  
  
“...confirmed with UKSR that a substantive release, incorporating the material in relation to the environmental reporting under clause 12 of the licences, will be prepared and will be published in the coming weeks. The scope of this publication will include information as is provided in the annual reports received by BEIS and as referenced in your request.”
  7. BEIS contacted the complainant again on 31 August 2021 explaining that it had seen a draft copy of UKSR’s intended publication and was satisfied that the publication would “...meet the scope of the information we committed to share with you,”. BEIS agreed to contact the complainant in September 2021 with an update.
  8. On 26 January 2022 the complainant contacted BEIS to ask for an update as they had not received any further correspondence. BEIS responded on the same day providing a copy of “Environmental Summary, UK Seabed Resources, UK 1 Contract Area, For the calendar year 2020. Prepared by UKSR Ltd 31 March 2021”, published October 2021<sup>2</sup>.

## Scope of the case

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9. BEIS advised the Commissioner that in preparing its internal review it confirmed with UKSR that a substantive release incorporating material in relation to the environmental reporting under clause 12 of the licences would be available in due course. BEIS considered that the disclosure of this information provided the information sought in the complainant’s request at point 7. It advised:  
  
“We note that we went beyond the consideration of what information could be provided at the time in response to the specific request and took further steps to support greater transparency in this area by

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<sup>2</sup> [https://www.lockheedmartin.com/content/dam/lockheed-martin/uk/documents/products/2020\\_UK1\\_Environmental\\_Summary.pdf](https://www.lockheedmartin.com/content/dam/lockheed-martin/uk/documents/products/2020_UK1_Environmental_Summary.pdf)

encouraging publication of further environmental information, which has since been provided to the complainant.”

10. The complainant interpreted this disclosure differently. They explained:

“BEIS deferred to UKSR to conduct this exercise and to consult third parties who had contributed to the reports and to redact any personal information.”

11. The complainant contacted the Commissioner on 28 September 2021 to complain about the way their request for information had been handled. They explained that the responses from BEIS were unclear:

“The Response is not clear as to the basis on which information is being withheld. BEIS refers to both Reg 12(2) [presumption in favour of disclosure] stating that some of the information in the annual reports is beyond the scope of environmental information. However, they also state that the reports are being withheld on the basis of Reg 12(5)(e)...

Clause 12(2) of the licence requires UKSR, every six months, to submit to the Secretary of State a summary written report of its exploration activities carried out under the plan of work and the licence. In addition, every year, these reports must also include annual expenditure on exploration in the exploration area and a statement of ownership of all other vessels used by the Licensee to explore in the exploration area.

Given the nature of the reports and the content required, it is highly conceivable that much, if not all, of the information is environmental information or is information integral to the environmental information.”

12. The Commissioner considers the scope of his investigation to be BEIS’ handling of the request and the application of regulation 12(5)(e) to withhold the Annual Reports UK1 and UK2 Contract Areas.

## **Reasons for decision**

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### **Regulation 12(5)(e) - confidentiality of commercial or industrial information**

13. Regulation 12(5)(e) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial

information where such confidentiality is provided by law to protect a legitimate economic interest.

14. For the Commissioner to agree that the withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR, the authority must demonstrate that:

- the information is commercial or industrial in nature;
- the information is subject to confidentiality provided by law;
- the confidentiality provided is required to protect a legitimate economic interest; and
- that the confidentiality would be adversely affected by disclosure.

15. The Commissioner asked BEIS to provide submissions covering all the above points, such that he was able to consider the application of the regulation whilst having sight of the withheld information.

16. BEIS advised the Commissioner that its view was that following the provision of the Environmental Summary there was no withheld information and it therefore did not address the points set out in paragraph 14.

17. BEIS remained of the view that the approach it had taken in responding to the request was correct and the information in the scope of the request had been provided.

18. The Commissioner notes that the request asks for "environmental reports" not "annual reports". However, in its initial response to point 7 BEIS explained:

"For completeness, annual reports - the scope of which are much broader than environmental information - are provided to the Secretary of State, in line with the scope of 12(2) of the exploration licences held by UKSR. These reports are not being released as part of this response, and are withheld under Regulation 12(5)(e) which exempts the release of information where the disclosure of the information would adversely affect the commercial interests of a company."

19. The Commissioner considers that as BEIS' responses to the complainant mention "annual reports" also being submitted under clause 12 of the licences they should also be considered to be in the scope of point 7 of the request. He therefore required copies of the annual reports and recommended that further consideration of the regulation 12(5)(e) was provided.

20. The Commissioner asked BEIS to clarify several points regarding the different reports. It confirmed that there is significant content in the annual reports which is not in the scope of point 7 and that all the information requested in the scope of point 7 is included in the published Environmental Summary.
21. BEIS re-iterated that the annual reports:

“...are not themselves ‘environmental reports’ but do contain information that could mean that parts of them can be regarded as having such a status.”
22. As BEIS considered there to be environmental information contained in the annual reports the Commissioner asked if it had considered redacting the annual reports in order to provide information in the respect of point 7 of the request. It responded saying that it was unable to do so as much of the information had been provided in confidence to the author of the annual reports and could not have been disclosed by BEIS in response to the request.
23. BEIS explained:

“The reports are provided to BEIS and to the International Seabed Authority, so we are not the principal audience for the reports and therefore have limited scope to set out how the information is presented/ordered. We believe they fall under Regulation 12(5)(e) and it would not be in the public interest to disclose them as information contained in these reports, if released could give significant commercial advantage to competitors, potential competitors, and with any information being released in a non-controlled way likely to have a significant and material impact on the valuation and commercial viability of the entity, and its reputation and credibility with investors to continue to operate.”
24. Furthermore BEIS advised the Commissioner that although it recognised that environmental information could be released it considered that the “approach taken to establishing that environmental information may be based on proprietary methods”.
25. The Commissioner understands from BEIS that it was not able to make a definitive determination on the information which should be provided. It advised:

“...this is why the department commenced a process to be in a position to properly release an ‘environmental report’, which was subsequently provided to the requester, and to which the ICO now has access alongside these originals.”

26. The complainant provided their view on the application of the criteria set out in paragraph 14 as follows:

"BEIS states that disclosure would cause 'a real competitive disadvantage'. However, the licences held by UKSR grant exclusivity to UKSR and state that the term of the licence is 15 years with the ability to extend for a further 5 years. It is therefore disingenuous to suggest that there is any real competitive disadvantage since there is no competition. In addition, it is not clear that the confidentiality in this instance is protecting a legitimate interest. UKSR is a wholly owned subsidiary of Lockheed Martin. Lockheed Martin is a defence and military aerospace company.

The Lockheed Martin 2020 annual report describes their focus as on military: "Our commitment to innovation led to advances that will define the future of defense and deterrence in the 21st century". However, UNCLOS [United Convention on the Law of the Sea 1982 ] specifically recognizes that "the Area" - which is where UKSR is conducting its exploration activities - and its resources "are the common heritage of mankind" and that "marine scientific research in the Area shall be carried out exclusively for peaceful purposes".

To the extent that UKSR are conducting exploration activities with a view to utilising polymetallic nodules for military purposes, this would be contrary to international law and any confidentiality that attaches to information about such activities would not be protecting a legitimate economic interest."

### **The Commissioner's view**

27. The Commissioner accepts the complainant's concern that, in effect, a third party determined the information to be disclosed, rather than the public authority holding the information, that information being the annual reports. They explained:

"...the EIR does not permit BEIS to ask a private company to perform its obligations under the EIR, including deciding what information to disclose [sic], when to disclose, what redactions are required and undertaking discussions with third parties."

28. The Commissioner acknowledges BEIS' reasoning for taking steps to assist the complainant by notifying them that UKSR would be creating an environmental summary. He also acknowledges BEIS' comment at paragraph 22 that information contained in the annual reports had been provided to the author (UKSR) in confidence and BEIS was therefore unable to redact the annual reports to disclose the appropriate environmental information. Nevertheless he finds the handling of this request to be unsatisfactory, leaving scope for the criticism from the complainant set out in paragraph 27.

29. BEIS has acknowledged that it should have contacted the complainant as soon as the Environmental Summary was available online (October 2021) rather than waiting for the ICO to proceed with the complaint it had received from the requester on 28 September 2021.
30. The Commissioner has viewed the annual reports and the environmental report. The annual reports contain significantly greater content with the report on UK1 Contract Area report covering 233 pages, and UK2 Contract Area 172 pages whilst the Environmental Summary totals 60 pages. The Commissioner notes that each page of the annual reports is marked "Commercial in Confidence Treatment Requested".
31. Although the Commissioner has seen that non-environmental information, such as financial information, is contained in the annual reports his view is that they nevertheless comprise environmental information as set out in EIR:

Regulation 2(1) as information on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; and

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;"

29. The Commissioner acknowledges that BEIS considered the publication and provision of an Environmental Summary prepared by UKSR to be a reasonable outcome. He considers that BEIS should have separated the publication of the Environmental Summary from its handling of the request and not relied on its future publication to address point 7 of that request.
30. The Commissioner notes the complainant's comments above in paragraph 26. He cannot comment on the specific content of the annual reports as any comment would reveal information currently withheld. However he does not agree that UKSR would not be likely to be adversely affected in terms of its commercial position.
31. It is not for the Commissioner to comment on the business or focus of Lockheed Martin, albeit that UKSR is a wholly owned subsidiary of Lockheed Martin. The Commissioner has neither seen nor been provided with evidence of exploration activities linked to utilising polymetallic



nodules for military purposes. He notes that an internet search provides numerous URLs with research papers covering the impact of mining polymetallic nodules along with other commentary including information on the various uses for the extracted metal and the proposed benefits in sourcing the metals. The Commissioner cannot comment or make a determination on the international law in these circumstances.

32. The Commissioner has considered the criteria set out above in paragraph 14. In relation to the first point he is satisfied that the information in the annual reports has a commercial content as it covers the survey and research expedition activities of UKSR Ltd in respect of delivering specific projects and experiments. He is also satisfied that the information in question, which is clearly not trivial, was provided to the UK government with an implied understanding of confidentiality and that it would not be disclosed. The information is not in the public domain. The Commissioner therefore accepts that the information attracts a common law duty of confidence and the second criteria is met.
33. With regard to the third criteria BEIS did not specify the legitimate economic interest which the confidentiality is protecting, however, the Commissioner is satisfied that the common law duty of confidence is protecting a legitimate economic interest which is the commercial interests of UKSR. Having considered the withheld information he is also satisfied that its disclosure would provide competitors with direct insight into UKSR's activities and financial position which in turn could be used by competitors to their advantage thereby adversely affecting UKSR. He notes the complainant's comments at paragraph 26 regarding the exclusive rights licences awarded to UKSR, nevertheless he considers that UKSR's competitors in markets elsewhere would have the advantage of detailed information on activities pertaining to these licences. He therefore accepts that the fourth criteria is met.
34. The Commissioner is satisfied that the exception at regulation 12(5)(e) is engaged.

### **Public interest test**

35. As with the other exceptions under the EIR, when regulation 12(5)(e) is engaged, the public authority must carry out a public interest test in order to decide whether the information should be withheld. Under regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under regulation 12(2), it must apply a presumption in favour of disclosure.
36. In its initial response to the complainant BEIS recognised:

“the general public interest in the disclosure of information which can help lead to greater transparency in Government decision making.”

37. BEIS went on to explain its view that there is a strong public interest in ensuring that the commercial interests of businesses are not damaged or undermined by information not in the public domain which would adversely impact their economic interests. It added that disclosure of the information would be contrary to the legitimate expectations of confidentiality.
38. The complainant provided the Commissioner with comprehensive reasons why the public interest favours disclosure. The points raised are set out below:
  - The information would help “the public understand what activities are taking place in the deep sea, what environmental harm may have already occurred, what protections are in place and whether these are sufficient to prevent damage to the deep sea environment, what the cost/benefit analysis of such activities is and what understanding there is at governmental level as regards the potential for harm, including to the sea bed, as a result of deep sea mining.”
  - “Interest in the commercial exploitation of the deep sea has increased in recent years and is predominantly driven by a few major companies in response to depleting terrestrial deposits for metals such as copper, nickel, aluminium, manganese, zinc and cobalt. The primary area of interest lies outside States’ exclusive economic zone (“EEZ”) in an area recognised by international law as common heritage for all mankind and referred to by the UN as “the Area”.”
  - “Regulations for the commercial exploitation of polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area are being drafted, with the participation of the UK and other States, by the International Seabed Authority (“ISA”). There are reports of plans to begin commercial exploitation of deep sea minerals by 2024.”
  - “The UK government has issued two deep sea mineral exploration licenses to Lockheed Martin’s UK subsidiary, UK Seabed Resources Ltd. (“UKSR”). No information regarding these licenses was publicly available until Greenpeace sought and obtained a redacted copy of the licences, not from the government but from Lockheed Martin.”
  - “Greenpeace is concerned that deep sea mining could result in irreversible harm to the seabed and the deep sea marine environment.”

- "...remote areas support species that are uniquely adapted to harsh conditions such as lack of sunlight and high pressure. It is believed that there are many species as yet undiscovered and that activities such as deep sea mining could render them extinct."
- "One of the exploration licence areas granted by the UK to UKSR has been described by one of the world's leading experts on this area as a "biodiversity hotspot".
- "The deep sea, its biodiversity and ecosystems and its role in protecting our environment, including from climate change, is not well understood. On the basis of current knowledge of the deep sea, the impacts of mining activities are predicted to include: disturbance of the seabed; sediment plumes and pollution."
- "There are, therefore, clear implications for the environment as a result of deep sea mining and as a result of the exploration licenses granted by the UK government to UKSR. Whether and to what extent the government is aware of the potential for environmental harm, how this might occur, the adequacy of reporting in this regard and whether deep sea mining should be prohibited completely, is of enormous public interest."
- "Transparency is particularly important, given the difficulty of accessing alternative sources of information and the need for proper public scrutiny of the activities taking place."
- "...there is a clear public interest in understanding the potential military uses to which Lockheed Martin is intending to put any minerals extracted given that this would be in breach of the 'peaceful purposes' requirement of international environmental law, including UNCLOS."
- "It is also in the public interest for this information to be released as the UK – and ultimately UK tax payers - is financially liable for any damage caused by UKSR in the exercise of its exploration license."
- "Despite the potential for serious environmental and financial impacts as a result of deep sea mining and the UK government's involvement through licensing and developing ISA regulations, there has been limited and belated disclosure of information. There has also been no consultation on whether and how any deep sea mining should take place."
- "In order for the public to participate in a meaningful way in environmental decision-making, access to information must not only be shared with the public, but it must be provided prior to

key decisions being taken by the UK government (Aarhus Convention, Articles 6-8)."

### **Balance of the public interest**

39. The complainant has made a compelling case in favour of disclosure of the withheld information. The Commissioner accepts that disclosure of the annual reports would more fully inform the public on the activities taking place in the deep sea environment. However he is less convinced that the reports would provide answers to all the elements set out by the complainant.
40. The Commissioner considers the complainant's concerns to be valid public interest concerns and worthy of serious deliberation. Notwithstanding this he notes that regulation of deep sea mining is undertaken by the International Seabed Authority ("ISA")<sup>3</sup> which advises:  
  
"All rules, regulations and procedures are issued within the general legal framework established by UNCLOS, particularly Part XI on the Area and the 1994 Agreement relating to the implementation of Part XI of UNCLOS."  
  
41. The Commissioner also notes that ISA has 99 "observers" comprising Observer States; United Nations System and intergovernmental organisations; and non-governmental observers, amongst which Greenpeace International is listed. Observers are allowed to participate in the work of the Assembly and the Council, albeit with limitations.
42. The Commissioner is surprised by the complainant's point that there has been limited disclosure of information on the impacts, both environmental and financial, of deep sea mining and no consultation on whether and how it should take place. He considers that transparency on the potential impacts and consultation would be in the public interest. Notwithstanding this, he does not consider that it is in the public interest that third parties such as UKSR have their commercial interests harmed, because of their involvement in deep sea exploration, in order to rectify this omission. He finds this particularly to be the case when the organisation has published an Environmental Summary for public access. The Commissioner also considers that

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<sup>3</sup> <https://www.isa.org.jm/the-mining-code/>

there will always be some inherent public interest in maintaining the principle of confidentiality and the relationship of trust.

43. In conclusion, the Commissioner accepts that the public interest in disclosure of the annual reports cannot be dismissed lightly. However, he considers that even after taking into account the presumption in favour of disclosure, this is outweighed by the combination of the negative impact on UKSR's commercial interests and any risk to the flow of confidential information to the UK government.

**Regulation 5(2) – Duty to make environmental information available**

44. Regulation 5(1) states that, subject to certain provisions, a public authority that holds environmental information shall make it available on request.
45. Regulation 5(2) states that information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.
46. In this case, BEIS responded to the request outside this timeframe and has therefore breached regulation 5(2) of the EIR

## Right of appeal

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47. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Susan Hughes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**